



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

September 28, 2005

Ms. Terry J. Satterlee
Lathrop & Gage, L.C.
2345 Grand Boulevard
Suite 2800
Kansas City, Missouri 64108-2684

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Wichita, Kansas 67206-4466

A722 TES

Site:	Garvey Elevator
ID#	NEN000704351
Break:	10.1
Other:	9-28-05

Re: CERCLA Docket No. 07-2005-0268

Dear Terry and David:

Pursuant to Paragraphs 49 and 50 of the above-referenced Agreement, and in accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9622(i)(1), and Section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 9673(d), this letter serves as written notice that the public comment period has closed and EPA did not receive any comments regarding the Agreement. Thus, there were no additional facts disclosed or considerations presented during the comment period which would indicate that the Agreement is inappropriate, improper or inadequate. Therefore, the Effective Date of the Agreement is the date of this letter. We appreciate your assistance in finalizing this Agreement, and please do not hesitate to give me a call at (913) 551-7826 if you need additional information or have any questions or concerns.

Sincerely,

Alyse Stoy
Assistant Regional Counsel

cc: Mike Felix, NDEQ
Annette Kovar, NDEQ

40225892



SUPERFUND RECORDS

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION VII**

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)	AGREEMENT
)	
Garvey Elevator Site)	U.S. EPA Region VII
Hastings, Nebraska)	CERCLA Docket No. 07-2005-0268
)	
AGP Grain Marketing, LLC)	PROCEEDING UNDER SECTION
and Garvey Elevators, Inc.)	122(h)(1) OF CERCLA
)	42 U.S.C. §9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Superfund Division by EPA Regional Delegation No. R7-14-014-D. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to Assistant Attorney General of the Environment and Natural Resources Division.

2. This Agreement is made and entered into by EPA and AGP Grain Marketing, LLC. ("Settling Party"), the party purchasing the Garvey Elevator Site ("Site"), and Garvey Elevators, Inc. ("Garvey"), the current owner/operator of the Site. Settling Party and Garvey consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Site which is located near Hastings, Nebraska. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. The Site is an active grain elevator owned and operated by Garvey since 1959. Carbon tetrachloride was used by Garvey as a grain fumigant from 1959 to 1985. Carbon tetrachloride was released into the environment from a leak in an underground delivery pipe at the Site. Settling Party was not involved at the Site until 1993.

5. Garvey has performed certain actions to investigate and address the contamination at the Site, including the installation of ground water recovery wells and soil vapor extraction wells to address the on-Site soil and groundwater contamination. In addition, Garvey has provided alternate sources of drinking water to nearby homes and businesses with private wells that have been impacted by contamination from the Site.

6. A Preliminary Assessment/Site Investigation was performed by the Nebraska Department of Environmental Quality ("NDEQ") at the Site in January 2003. NDEQ collected ground water samples, conducted a domestic well information and water treatment system survey, conducted a drinking water source/supply survey and a Global Positioning System survey. Information collected at and near the Site suggests that carbon tetrachloride from the Site has reached the aquifer and migrated to nearby drinking water wells.

7. In response to the release or threatened release of hazardous substances at or from the Site, EPA has determined that response actions are necessary at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

8. In performing and/or overseeing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

9. EPA, Settling Party and Garvey recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party and Garvey in accordance with this Agreement do not constitute an admission of any liability by Settling Party or Garvey. Settling Party denies it has any liability for the Site. Settling Party and Garvey do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

10. This Agreement shall be binding upon EPA and upon Settling Party, Garvey, and their successors and assigns. Any change in ownership or corporate or other legal status of Settling Party or Garvey, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's or Garvey's rights and responsibilities under this Agreement. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Party under this Agreement may be assigned or transferred to any person with the prior written consent of EPA. EPA shall conduct its review and approval or disapproval of any request for assignment or transfer within a reasonable timeframe, and any consent by EPA will not be unreasonably withheld. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

11. By entering into this Agreement, the mutual objectives of the Parties are to: (1) allow Settling Party to resolve any potential civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, with regard to the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX; and (2) provide for funds paid by Settling Party in consideration for this Agreement to be used by Garvey solely for EPA-approved response actions at the Site in accordance with the Escrow Agreement.

12. Settling Party's responsibilities pursuant to this Agreement include: (i) payment of funds into an escrow account following closing of the purchase agreement to be used by Garvey to fund response actions at the Site; (ii) provide Garvey and EPA access to the Site to conduct response actions; (iii) refrain from any activity that would interfere with the response actions or exacerbate the existing contamination at the Site; and (iv) comply with certain Site use restrictions, described herein.

V. DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Escrow Agreement" shall mean the Escrow Agreement entered into between Garvey, AGP, EPA and the Escrow Agent, attached as Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the

rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA, Settling Party and Garvey.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

k. "Settling Party" shall mean AGP Grain Marketing, LLC.

l. "Site" shall mean the Garvey Elevator Superfund Site, encompassing approximately 106 acres, located at 2315 W. Highway #6, Hastings, Adams County, Nebraska, and generally shown on the map included in Appendix B.

m. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

n. "Work" shall mean any and all activities performed by Garvey pursuant to the Administrative Order on Consent for Removal Action and Remedial Investigation/Feasibility Study (Docket No. CERCLA-07-2005-0215), and any response action required by EPA as set forth in any future Record of Decision, Action Memorandum, Administrative Order on Consent, Consent Decree, Unilateral Administrative Order and/or any other directive to be issued by EPA for the Site, as more particularly set forth in the Escrow Agreement.

VI. PAYMENT OF RESPONSE COSTS

14. Within 45 days after the Effective Date of this Agreement as defined in Section XXIII, and pursuant to the terms of the Escrow Agreement attached as Appendix A, and provided that those conditions that warrant Cancellation under Section XXIV have not occurred, Settling Party shall deposit with the Escrow Agent \$2,050,000.00 to be placed into an interest bearing Escrow Fund. These funds paid by Settling Party in consideration for this Agreement shall be used by Garvey to perform Work at the Site as directed and approved by EPA in its sole discretion. Garvey further agrees to grant EPA a security interest in the Escrow Fund pursuant to the terms of the Escrow Agreement attached as Appendix A in order to secure Garvey's obligation to EPA pursuant to this Agreement.

VII. INSTITUTIONAL CONTROLS

15. Commencing on the Effective Date, Settling Party shall refrain from using the Site, or such other property, in any manner that would unreasonably interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions to be performed at or near the Site. Such restrictions include, but are not limited to, (1) the construction, installation, maintenance or use of any wells on the Site for the purpose of extracting water for human use or consumption; (2) disturbance of the subsurface of the Site; and (3) any type of residential development on the Site.

16. Settling Party shall execute and record in the Recorder's Office of Adams County, State of Nebraska, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to response actions at or near the Site, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 15 of this Agreement, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the response actions to be performed at or near the Site. Settling Party shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Garvey, its contractors, subcontractors, and/or vendors, and/or (iv) other appropriate grantees. Settling Party shall, within 45 days of acquiring title to the Site, submit to EPA for review and approval with respect to such property:

a. A draft easement, in substantially the form attached hereto as Appendix C, that is enforceable under the laws of the State of Nebraska, and

b. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances, subject to easements, restrictions, reservations of record, liens or encumbrances that are approved by EPA or when, despite best efforts, Settling Party is unable to obtain release or subordination of such prior liens or encumbrances.

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Party shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office of Adams County. Within 30 days of recording the easement, Settling Party shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

17. For purposes of Paragraph 16 of this Agreement, "best efforts" includes the payment of reasonable sums of money in consideration of an agreement to release or subordinate a prior lien or encumbrance. If Settling Party is unable to obtain an agreement pursuant to Paragraph 16 from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days after Settling Party acquires title to the Site, Settling Party shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Party has taken to attempt to comply with Paragraph 16 of this Agreement. The United States may, as it deems appropriate, assist Settling Party in obtaining the release or subordination of a prior lien or encumbrance. Settling Party shall reimburse the United States for all costs incurred, direct or indirect, by the United States in obtaining such release/subordination of prior liens or encumbrances including, but not limited to, the reasonable cost of attorney time and the amount of monetary consideration paid or just compensation.

18. If EPA reasonably determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the future by EPA for the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Party shall provide reasonable cooperation with EPA's efforts to secure such governmental controls.

19. Notwithstanding any provision of this Agreement, the United States retains all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

VIII. DUE CARE/COOPERATION

20. Settling Party shall exercise due care at the Site with respect to the contamination and shall comply with all local, State, and federal laws and regulations. EPA and Garvey agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with Settling Party's operations by their entry and response. EPA believes based on current information that response actions to address the contamination should not materially interfere with Settling Party's operations, and EPA agrees, consistent with the NCP, to make every effort to select future response actions that will not result in material interference with Settling Party's operations. In the event Settling Party becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Party shall immediately take all reasonable and appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

IX. CERTIFICATION

21. By entering into this Agreement, Settling Party certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Party and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date of this Agreement, or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site. The Settling Party also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Party is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and United States reserves all rights it may have.

X. FAILURE TO COMPLY WITH AGREEMENT

22. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 14 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Party's failure to make timely payments pursuant to Section VI, including but not limited to, payment of stipulated penalties pursuant to Paragraph 23.

23. Stipulated Penalty.

a. If the amount due to EPA under Paragraph 14 is not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 22, \$2,500.00 per violation per day that such payment is late.

b. If Garvey fails to fully comply with the terms of this Agreement and Escrow Agreement attached as Appendix A, as determined by EPA, Garvey shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty \$2,500.00 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID # A72Z, and the EPA docket number for this action (CERCLA-07-2005-0268), and shall be sent to:

Mellon Bank
EPA Superfund
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

d. At the time of each payment, Settling Party and/or Garvey shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the EPA Region and Site-Spill ID # A72Z and the EPA Docket Number for this action.

e. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party or Garvey of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

24. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's or Garvey's failure to comply with the specified requirements of this Agreement, Settling Party and Garvey shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3) for failure or refusal to comply with any term or condition of this Agreement. If the United States brings an action to enforce this Agreement and is successful, Settling Party and Garvey shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time. The rights and obligations of Garvey and Settling Party pursuant to this Agreement are severable and shall not be in any manner dependent upon each other.

25. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's or Garvey's payment of stipulated penalties shall not excuse Settling Party or Garvey from payment as required by Section VI or from performance of any other requirements of this Agreement.

XI COVENANT NOT TO SUE BY EPA

26. Covenant Not to Sue by EPA. Except as specifically provided in Section XII (Reservations of Rights by EPA), EPA covenants not to sue or to take any other civil or administrative action against Settling Party, its successors and assigns pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. This covenant shall take effect upon receipt by EPA of the amount required by Section VI (Payment of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any

other person. EPA, and the United States on behalf of EPA, expressly do not extend this covenant not to sue to Garvey or any of its predecessors, successors, assigns, parent corporation(s), subsidiary(s), officer(s), director(s), or employees.

XII. RESERVATIONS OF RIGHTS BY EPA

27. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 28. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability resulting from exacerbation by Settling Party, its successors, assignees, lessees or sublessees, of contamination at the Site;
- e. liability, based upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Party;
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant by Settling Party outside of the Site; and
- g. liability under RCRA arising after the Effective Date of this Agreement on account of any actions by Settling Party, its successors, assignees, contractors, subcontractors, representatives, lessees or sublessees that require a RCRA permit in accordance with 42 U.S.C. § 6925 and 40 C.F.R. Parts 264 through 270.

28. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement. In addition, nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Garvey or any of its predecessors, successors, assigns, parent corporation(s), subsidiary(s), officer(s), director(s), or employees.

29. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than Settling Party to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Party acknowledges that it is purchasing property where response actions may be required.

XIII. COVENANT NOT TO SUE BY SETTLING PARTY

30. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Nebraska Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 34 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 27(c), (e), or (f), but only to the extent that Settling Party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

31. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

32. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

33. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or by any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations.

34. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section XI.

XV. SITE ACCESS

35. Commencing upon the effective date of this Agreement, and to the extent Settling Party has legal authority to control access to the Site, Settling Party agrees to provide EPA, Garvey and their representatives and contractors access at all reasonable times to the Site for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site; and
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XVI (Access to Information).

36. Settling Party shall ensure that assignees, successors in interest, lessees, and sublessees of the Site property shall be subject to the same requirement to provide the same access and cooperation. Settling Party shall ensure that a copy of this Agreement is provided to any current

lessee or sublessee on the Site property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Site property or an interest in the Site property are consistent with this Agreement.

37. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVI. ACCESS TO INFORMATION

38. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

39. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such documents or information without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

40. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XVII. RETENTION OF RECORDS

41. Until 15 years after the Effective Date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

42. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such record, and, upon request by EPA, Settling Party shall deliver such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XVIII. RECORDS CERTIFICATION

43. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to the Site or its involvement with the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIX. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. The Parties shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally.

45. If Settling Party and/or Garvey objects to any EPA action taken pursuant to this Agreement it shall notify EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Party and/or Garvey shall have 30 days from EPA's receipt of the written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended upon mutual agreement of the Parties to the dispute.

46. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the parties to the dispute, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the EPA Region VII Regional Judicial Officer will issue a written decision on the dispute. The EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Settling Party's and/or Garvey's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section, unless EPA otherwise agrees in writing. Following resolution of the dispute, as provided by this Section, Settling Party and/or Garvey shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XX. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA, Settling Party and Garvey.

As to EPA:

Alyse Stoy
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Brian Mitchell, Environmental Engineer
Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

As to Settling Party:

AGP Grain Marketing, LLC
Attn: Legal Department
12700 West Dodge Road
Omaha, Nebraska 68154

As to Garvey:

Garvey Elevators, Inc.
Attn: Richard Garvey, President
2918 Wingate Street
P.O. Box 9600
Fort Worth, Texas 76147

David M. Traster
Foulston Siefkin, LLP
1551 North Waterfront Parkway
Suite 100
Wichita, Kansas 67206-4466

XXI. INTEGRATION/APPENDICES

48. This Agreement and its appendices contains the entire understanding between the Parties with respect to the matters set forth herein. Provided, however, the parties have entered into other agreements including the Purchase Agreement between AGP and Garvey, an Administrative Order on Consent between EPA and Garvey (Docket No. CERCLA-07-2005-0215), an Escrow Agreement between EPA, Garvey, AGP, and JPMorgan Chase Bank, N.A., and a Security Agreement between EPA and Garvey. Further, this Agreement contemplates disbursements for Work to be set forth in any future Record of Decision, Action Memorandum, Consent Decree, Administrative Order on Consent, Unilateral Administrative Order, and/or other directive to be issued by EPA for the Site. Nothing in this Agreement shall be deemed to alter or amend such other agreements, and there shall be no merger of said agreements. Nevertheless, such agreements shall be construed in light of one another to accomplish the purposes of the parties as provided in all of such agreements. The following appendices are attached to and incorporated into this Agreement:

Appendix A is the Escrow Agreement;
Appendix B is the Site Map;
Appendix C is the Restrictive Covenant and Environmental Easement.

XXII. PUBLIC COMMENT

49. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XXIII. EFFECTIVE DATE

50. The Effective Date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 49 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

XXIV. CANCELLATION

51. This Agreement is subject to Cancellation by Settling Party within thirty (30) days of the Effective Date if for any reason Settling Party and Garvey have failed to close on the purchase agreement for the Site. This provision does not in any way affect Settling Party or Garvey's rights or obligations under the Purchase Agreement or alter or amend the terms thereof.

IT IS SO AGREED:

AGP Grain Marketing, LLC

By: J. Keith Spackler
Name J. KEITH SPACKLER
MANAGER, SECRETARY & TREASURER

6/30/05
Date

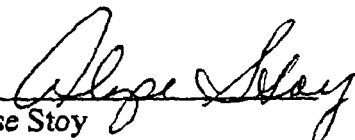
Garvey Elevators, Inc.

By: Richard F. Garvey

Name RICHARD F. GARVEY
PRESIDENT

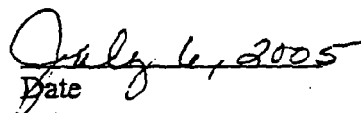
7-5-05
Date

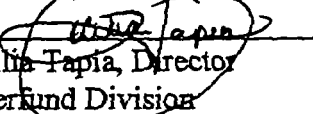
U.S. Environmental Protection Agency

By: 
Alyse Stoy

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region VII


Date

By: 
Cecilia Tapia, Director
Superfund Division

U.S. Environmental Protection Agency, Region VII

7/11/05
Date

U.S. Department of Justice

By: Kelly A. Johnson
Kelly A. Johnson
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

8/8/05
Date

By: Katherine A. Loyd
Katherine A. Loyd
Trial Attorney
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

08/10/05
Date

Appendix A

Escrow Agreement

ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement") is entered into to be effective as of September 28, 2005 by and between Garvey Elevators, Inc., a Kansas corporation ("Garvey"), AGP Grain Marketing, LLC, an Iowa limited liability company ("AGP"), the United States of America by and through the Environmental Protection Agency (the "EPA"), and JPMorgan Chase Bank, N.A., a national association ("Escrow Agent").

I. RECITALS

1.1 Whereas, Garvey, as Seller, and AGP, as Buyer, have entered into a certain Real Estate Purchase Agreement (the "Purchase Agreement") dated the sixth (6th) day of December, 2004, as amended, wherein Garvey has agreed to sell to AGP and AGP has agreed to purchase from Garvey certain real and personal property more particularly described in the Purchase Agreement. Escrow Agent is not a party to, has not received and will not be responsible for the Purchase Agreement.

1.2 Whereas, the real property described in the Purchase Agreement is known as the Garvey Elevator Superfund Site ("Site") and is a location where hazardous substances have been released.

1.3 Whereas, EPA alleges that Garvey is liable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended, 42 U.S.C. § 9601 *et seq.* ("CERCLA") for all response actions to be performed at the Site and all response costs incurred and to be incurred by the United States in connection with the Site.

1.4 Whereas, Garvey and AGP have agreed to deposit a portion of the proceeds of the sale of the Site into an Escrow Fund to be held and disbursed by the Escrow Agent pursuant to an Agreement between EPA, AGP and Garvey (CERCLA-07-2005-0268) ("Agreement") and the terms of this Escrow Agreement.

1.5 Whereas, Garvey asserts that it has limited funds and that the Escrow Fund is Garvey's only source of funds available to perform all response actions to be implemented at the Site and to pay for response costs incurred and to be incurred by EPA and NDEQ related to the Site.

1.6 Whereas, all disputes regarding the enforcement of this Escrow Agreement shall be resolved using the Dispute Resolution provision set forth in Section XIX of the Agreement. Escrow Agent will not be responsible for the Dispute Resolution provision set forth in Section XIX of the Agreement.

1.7 Whereas, the Escrow Agent is independent of the parties and has no prior relationship with Garvey or AGP.

1.8 Whereas, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged and agreed, Garvey, EPA, AGP and the Escrow Agent agree to the matters set forth in this Escrow Agreement.

1.9 Garvey and AGP hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, as approved by EPA, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

II. AGREEMENT

2.1 In conjunction with the closing of the sale under the Purchase Agreement, AGP shall transfer and deposit with the Escrow Agent Two Million Fifty Thousand Dollars (\$2,050,000.00) of the Purchase Price as defined in the Purchase Agreement (the "Escrow Deposit"). The Escrow Agent shall hold the Escrow Deposit and, subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof (together, the "Escrow Fund") as directed in Section 2.2. The Escrow Fund shall be irrevocable. Further, this Escrow Agreement shall not be effective unless or until the closing occurs under the Purchase Agreement and this Escrow Fund is funded.

2.2 Upon receipt of the Escrow Fund, the Escrow Agent shall deliver to Garvey, the EPA and AGP an acknowledgment of receipt showing the amount of the Escrow Fund. The Escrow Fund shall be placed by the Escrow Agent in an interest bearing account ("JPMorgan MMA"), unless otherwise instructed in writing by Garvey and EPA. Such written instructions, if any, referred to in the foregoing sentence shall specify the type and identity of the investments to be purchased and/or sold and will be executed through JPMorgan Asset Management ("JPMAM"), in the investment management division of JPMorgan Chase. Subject to the principles of best execution, transactions are effected on behalf of the Escrow Fund through broker-dealers selected by JPMAM. A reasonable and customary agency fee will be assessed in connection with each transaction as set forth in Exhibit C (Fee Schedule). The Escrow Agent shall have the right to liquidate any investment held in order to provide funds necessary to make required payments under this Escrow Agreement. The Escrow Agent shall have no liability for any loss sustained as a result of any investment made pursuant to the terms of this Escrow Agreement or as a result of any liquidation of any investment prior to its maturity or for the failure of the parties to give the Escrow Agent instructions to invest or reinvest the Escrow Fund. The parties acknowledge that the Escrow Agent may receive reasonable and customary compensation with respect to any investment directed hereunder, however this compensation shall not in any way be paid from or deducted from the Escrow Fund. Receipt, investment and reinvestment of the Escrow Deposit shall be confirmed by Escrow Agent as soon as practicable by account statement, and any discrepancies in any such account statement shall be noted by the parties to the Escrow Agent within 30 calendar days after receipt thereof. All interest and other income earned on the Escrow Fund, less all applicable state and federal income taxes due on such income, shall be included in and become part of the Escrow Fund.

2.3 Eligible Payments from Escrow Fund: The escrow created by this Escrow Agreement will provide funds necessary to implement response actions at the Site, pay for any and all past and future response costs that have been or may be incurred by the United States or the Nebraska Department of Environmental Quality ("NDEQ") at the Site pursuant to CERCLA, and to otherwise fund any and all past and future costs, including but not limited to oversight costs, natural resource damages and any obligation Garvey has or may have to EPA or NDEQ at the Site under the Administrative Order on Consent for Removal Action and Remedial Investigation/Feasibility Study (EPA Docket Number CERCLA-07-2005-0215) as well as any response action required by EPA as set forth in any future Record of Decision, Action Memorandum, Consent Decree, Administrative Order on Consent, Unilateral Administrative Order, and/or other directive to be issued by EPA for the Site (collectively the "Work"). EPA asserts that the Work is necessary for investigation and cleanup of the currently existing environmental contamination at the Site owned by Garvey and legally described on Exhibit "A" attached hereto. The Work also expressly includes EPA past response costs and shall also include EPA and NDEQ direct and indirect costs that Garvey has agreed to pay pursuant to an Administrative Order on Consent or Consent Decree, and incurred by EPA and/or NDEQ in reviewing or developing plans, reports and other items prepared by Garvey to implement the Work, verifying the Work, or otherwise implementing, overseeing, or enforcing the Work, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry costs, costs paid to secure access, emergency response, and Work takeover. Eligible payments further include any taxes owed by Garvey to the appropriate taxing authority as set forth in Section 2.37. Garvey acknowledges and warrants to AGP and to the EPA that Garvey will use reasonable efforts to complete the Work in a timely and workmanlike manner and that the Escrow Fund will be used for only the purposes outlined in this Escrow Agreement. Garvey further warrants to AGP and the EPA that Garvey will begin the Work as soon as reasonably practical after the execution of this Escrow Agreement and the funding of the Escrow Fund.

2.4 EPA Approval of Disbursements: Except as otherwise provided in this Escrow Agreement, the Escrow Agent shall disburse Escrow Funds directly to Garvey's contractors, subcontractors and/or vendors as the charges become due after Garvey submits written disbursement requests for Work performed that have been approved in writing by EPA. Except as provided in Sections 2.5 and 2.7, prior to Garvey's submission of a disbursement request to the Escrow Agent, Garvey shall submit the request to the EPA for review and approval. The EPA shall have thirty (30) days, or shorter timeframe as agreed to by Garvey and EPA for any particular disbursement request, from the receipt of such request to review and approve or disapprove the request. After the request has been approved in writing by the EPA, Garvey shall submit the request to the Escrow Agent for payment and the Escrow Agent shall make disbursements of the Escrow Fund without any further instructions or documentation from Garvey or EPA. Any EPA disapproval of a disbursement request shall be subject to Garvey's right to invoke the Dispute Resolution provision set forth in Section XIX of the Agreement. There is a presumption that any disbursement request by Garvey to disburse funds necessary to

implement response actions pursuant to an EPA-approved or NDEQ-approved work plan will be approvable by EPA.

The request shall state the payee(s), a description of the Work performed relating to the disbursement request, the amount of the requested disbursement to be paid directly to each contractor, subcontractor or vendor who has performed part of the Work and shall include copies of invoices for labor, materials and/or any other expenses applicable to that portion of the Work for which disbursement of the Escrow Fund is requested. The Escrow Agent shall not have any obligation to review any supporting invoices, and Escrow Agent shall not be liable for any action taken or omitted to be taken in reliance upon any written notice, request, waiver, consent, certificate, receipt, authorization, or other paper or document delivered to Escrow Agent by Garvey or EPA and believed by it to be genuine.

2.5 EPA Pre-Approval of Disbursements: Garvey may submit a request to the EPA for pre-approval of a disbursement request. The EPA shall have thirty (30) days, or shorter timeframe as agreed to by Garvey and EPA for any particular disbursement request, from the receipt of such pre-approval request to review and approve or disapprove the request. The request for pre-approval shall state the proposed payee(s), a description of the Work to be performed relating to the disbursement request, the amount of the requested disbursement to be paid directly to each contractor, subcontractor or vendor who will perform part of the Work and shall include an estimate prepared by the contractor, subcontractor or vendor for labor, materials and/or any other expenses applicable to that portion of the Work for which disbursement of the Escrow Fund is requested. If the request has been pre-approved in writing by the EPA, the Work actually performed was substantially the same as the Work described in the pre-approval request to EPA, and the actual cost of the Work performed by the contractor or subcontractor is 90% to 110% of the amount pre-approved by EPA, Garvey shall provide documentation to EPA identifying the payee(s), a description of the Work performed relating to the disbursement request, the amount of the requested disbursement to be paid directly to each contractor, subcontractor and/or vendor who has performed part of the Work and copies of invoices for labor, materials and/or any other expenses applicable to that portion of the Work for which disbursement of the Escrow Fund is requested. EPA then shall submit approval of such disbursement as provided in Paragraph 2.4. Upon EPA approval, Garvey may submit the request to the Escrow Agent for payment. If the actual cost of the Work performed by the contractor or subcontractor is less than 90% or more than 110% of the amount pre-approved by EPA, or if the Work performed is substantially changed from the Work described in the pre-approval request to EPA, then Garvey shall submit a new request for approval to EPA pursuant to Section 2.4. Mere variance between the original estimated cost and the actual cost consistent with the terms of this Paragraph shall not be a basis for disapproval of a payment request.

2.6 It is the intent of EPA and Garvey to work cooperatively throughout the implementation of the review and approval process of requests for disbursements from the Escrow Fund. The requirements of the review and approval process may be modified upon mutual agreement of the parties as set forth in Section 2.18.

2.7 EPA Demands for Past Costs and EPA/NDEQ Bills for Costs: Any demand by EPA for reimbursement of past costs incurred in connection with the Site shall be paid from the Escrow Fund to the extent there are funds available to pay such demand. Garvey reserves its right to raise any defenses it may have to liability for payment of such past response costs.

Any EPA or NDEQ bill for direct and indirect costs (as further described in Section 2.3) issued by EPA or NDEQ to Garvey shall be paid from the Escrow Fund to the extent there are funds available to pay such bill. EPA and NDEQ shall send any bill for direct and indirect costs to Garvey and the Escrow Agent instructing Escrow Agent to pay such bill, and the Escrow Agent shall make disbursements of the Escrow Fund by the due date specified in the bill (which shall be at least 30 days after Garvey's receipt of the bill) without any further instructions, approval, signatures or documentation from Garvey, EPA or NDEQ, subject to any dispute resolution rights Garvey may have. If Garvey invokes its right to dispute resolution to resolve a dispute relating to a bill, the Escrow Agent shall make disbursements from the Escrow Fund for such costs in accordance with the agreement reached by the EPA and Garvey or any final decision issued by the Regional Judicial Officer.

Payments to EPA made pursuant to this Section shall be by a trust check made payable to "EPA Hazardous Substances Superfund" to be placed into the Garvey Elevator Site Special Account, referencing the name and address of the party making the payment and EPA Site/Spill ID number A72Z. The check shall be sent to: Mellon Bank, U.S. Environmental Protection Agency Region VII, P.O.Box 371099M, Pittsburgh, PA, 15251. At the time of payment, the Escrow Agent shall send notice that payment has been made to:

Linda Long
Regional Financial Management Officer
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Brian Mitchell, Environmental Engineer
Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

Garvey Elevators, Inc.
P.O. Box 9600
Fort Worth, Texas 76147
Attention: Richard Garvey, President

Payments to NDEQ made pursuant to this Section shall be by a trust check or checks made payable to "Department of Environmental Quality, State of Nebraska" referencing the name and

address of the party making the payment and NDEQ number 36-345-4596. The check shall be sent to: Nebraska Department of Environmental Quality, Attn: Diane Hiller, Suite 400, The Atrium, 1200 N. Street, P.O. Box 98922, Lincoln, NE 68509-8922, with notice of such payment to EPA and Garvey.

2.8 Final Request: Upon final completion of the Work, Garvey shall deliver to the EPA, for review and approval, which approval or disapproval shall not be unreasonably withheld or delayed, a statement certifying that the Work has been fully completed (the "Final Request"). Garvey shall only be entitled to the remaining balance in the Escrow Fund if and upon the express condition that the EPA approves the Final Request in writing and certifies in writing to Garvey that the Work has been completed in full compliance with CERCLA and in satisfaction of Garvey's obligations under CERCLA to the EPA's satisfaction (the "Final Certification"). After the EPA has issued its Final Certification, Garvey shall submit the Final Request to the Escrow Agent for payment with a copy of the Final Certification. The Escrow Agent shall thereupon make the disbursement of the remaining balance of the Escrow Fund to Garvey.

2.9 Whenever under the terms hereof the time for performance of any provisions shall fall on a date which is not a regular Business Day of Escrow Agent, the performance thereof on the next succeeding regular Business Day of Escrow Agent shall be deemed to be in full compliance. Whenever time is referred to in this Escrow Agreement, it shall be the time recognized by Escrow Agent in the ordinary conduct of its normal business transactions. Escrow Agent shall be deemed to have properly delivered any item of property upon (i) placing the item in the United States mail in a suitable package or envelope with first class prepaid postage - affixed, addressed to the addressee at such addressee's address as set forth in this Escrow Agreement or such other address as any of the undersigned shall have furnished to Escrow Agent in writing; (ii) delivery in person at Escrow Agent's offices; or (iii) delivery in any other manner pursuant to written instructions of the party to whom such property is to be delivered.

2.10 All reasonable and customary escrow fees charged by the Escrow Agent (Exhibit "C", Fee Schedule) shall be paid from the Escrow Fund. In the event that there are inadequate funds in the Escrow Fund to pay moneys owing to Escrow Agent hereunder, AGP and Garvey jointly and severally agree to pay Escrow Agent such amount. Upon such payment, the Escrow Fund shall be closed and all obligations of the Parties pursuant to this Escrow Agreement shall terminate. In addition, AGP and Garvey hereby jointly and severally agree, to the extent funds are not available in the Escrow Fund, to pay to Escrow Agent all reasonable expenses, disbursements and advances incurred or made by the Escrow Agent in performance of its duties hereunder, including but not limited to, legal fees and expenses, in the event Escrow Agent deems it necessary to retain counsel. Such amounts shall be paid to Escrow Agent within 10 days following receipt by AGP or Garvey of a written statement setting forth such expenses.

2.11 During the term of this Escrow Agreement, the Escrow Agent at no additional charge shall provide AGP, Garvey, EPA and NDEQ each with quarterly statements containing the beginning balance in the Escrow Account as well as all transactions for the statement period.

2.12 Escrow Agent is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness, or validity of any agreement or document out of which this Escrow Agreement may arise; nor is Escrow Agent liable in any manner for the identity or authority of any person executing this Escrow Agreement or any other document out of which this Escrow Agreement may arise. Escrow Agent shall not be responsible or liable for any loss, damage or liability occasioned by reason of Escrow Agent's duties or rights hereunder, save and except acts of fraud or negligence by Escrow Agent. Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits) even if the Escrow Agent has been advised of the likelihood of such loss or damage.

2.13 In the event of any disagreement or the presentation of adverse or conflicting claims or demands or requests, Escrow Agent may, at its sole option, be entitled to refuse to comply with any such claims or demands or requests during the continuance of such disagreement or conflicting claims or requests, and, in making such refusal, may refrain from ordering any disbursements of the Escrow Fund or taking any other affirmative action hereunder. In such event, Escrow Agent may, at its sole option, interplead the Escrow Fund, or any portion thereof, into the Registry of a Court of competent jurisdiction. In so acting, Escrow Agent shall not become personally liable to any party hereto, or any other person or entity, for or because of its failure to comply with any request in connection with such disbursement or such adverse or conflicting claims or demands.

2.14 It is expressly agreed that the parties hereto may not assign, in whole or in part, or delegate any of their respective rights, titles, interests or duties hereunder without the written consent of all parties hereto. Provided, however, the parties understand and agree that many of the functions and obligations set out herein will actually be undertaken by Garvey's contractors, subcontractors, and/or vendors.

2.15 It is expressly agreed that this Escrow Agreement is for the sole benefit of the EPA and shall not be construed or deemed to be made for the benefit of any other party or third parties.

2.16 This Escrow Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Kansas.

2.17 If any provision of this Escrow Agreement or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Escrow Agreement and the application of such provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

2.18 This Escrow Agreement contains the entire understanding between the parties hereto with respect to the matters set forth herein. No variations, modifications or changes

hereof shall be binding upon any party hereto unless set forth in a document duly executed by all parties hereto. Provided, however, EPA, AGP and Garvey have entered into other agreements including the Purchase Agreement between AGP and Garvey, an Administrative Order on Consent between EPA and Garvey (CERCLA-07-2005-0215), an Agreement between EPA, Garvey and AGP (CERCLA-07-2005-0268), and a Security Agreement between EPA and Garvey attached hereto as Exhibit B. Further, this Escrow Agreement contemplates disbursements for Work to be set forth in any future Record of Decision, Action Memorandum, Consent Decree, Administrative Order on Consent, Unilateral Administrative Order, and/or other directive to be issued by EPA for the Site. Nothing in this Escrow Agreement shall be deemed to alter or amend such other agreements, and there shall be no merger of said agreements. Nevertheless, such agreements shall be construed in light of one another to accomplish the purposes of the parties as provided in all of such agreements. Escrow Agent is only a party to this Escrow Agreement.

2.19 Whenever used herein, the singular number shall include the plural, and the use of any gender shall include all genders. This Escrow Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, assigns, and trustees.

2.20 The Escrow Agent may resign for any reason, upon 30 days written notice to Garvey, AGP and the EPA as parties to this Escrow Agreement. Upon expiration of such 30 day notice period, the Escrow Agent may deliver all cash and other property in its possession, after the payment of all fees and expense of the Escrow Agent, under this Escrow Agreement to any successor escrow agent jointly appointed by Garvey, AGP, and the EPA, or if no successor escrow agent has been so appointed to any court of competent jurisdiction in the Federal Court registry. Upon either such delivery, the Escrow Agent shall be released from any and all liability under this Escrow Agreement. A termination under this paragraph shall in no way discharge clauses 2.10 and 2.39 affecting reimbursement of expenses, indemnity and fees. The Escrow Agent shall have the right to deduct from the property to be transferred to any successor agent any unpaid fees and expenses. In the event that Garvey, the EPA, and AGP are unable to mutually agree upon the successor escrow agent within the thirty (30) day notice period described above, the Escrow Agent shall designate the successor escrow agent by written notice to Garvey, AGP and the EPA.

2.21 All notices or other communications required or permitted to be given pursuant to this Escrow Agreement shall be in writing and shall be considered as properly given if mailed by certified mail, postage prepaid, with return receipt requested, upon confirmed transmittal if by facsimile, or by overnight delivery using a nationally recognized overnight delivery service or by delivering the same in person to the intended addressee as follows:

Garvey:

Garvey Elevators, Inc.
P.O. Box 9600
Fort Worth, Texas 76147
Attention: Richard Garvey, President
Facsimile No.: (817) 335-1905

David M. Traster
Foulston Siefkin, LLP
1551 North Waterfront Parkway
Suite 100
Wichita, Kansas 67206-4466
Facsimile No.: (866) 347-3138

AGP:

AGP Grain Marketing, LLC
12700 West Dodge Road
Omaha, Nebraska 68154
Attention: Legal Department
Facsimile No.: (402) 431-5050

Escrow Agent:

JPMorgan Chase Bank, N.A.
600 Travis, 53rd Floor
Houston, Texas 77002
Attn: Luis Bustamante
Facsimile No.: (713) 216-6927
Telephone No.: (713) 216-5793

EPA:

Alyse Stoy
Assistant Regional Counsel
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101
Facsimile No.: (913) 551-7925

Brian Mitchell, Environmental Engineer
Superfund Division

U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101
Facsimile No.: (913) 551-7948

NDEQ:

Mike Felix
Section Supervisor
Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
Suite 400, The Atrium, 1200 N Street
P.O. Box 98922
Lincoln, NE 68509-8922
Facsimile No.: (402) 471-2909

Notice which is so mailed or placed with an overnight delivery service shall be effective upon its deposit in the United States Mail or with the overnight delivery service. Notice given in any other manner shall be effective upon its receipt by the addressee. It is agreed that any party shall have the right to change its address for notice hereunder by giving 30 days prior written notice of such change to the other parties to this Escrow Agreement in the manner set forth herein.

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

2.22 This Escrow Agreement may be executed in multiple original counterparts, all of which shall be deemed originals and with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one and the same instrument. All signatures of the parties to this Escrow Agreement may be transmitted by facsimile, and such facsimile will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.

2.23 Either Garvey, AGP or EPA may hereafter act through an agent or attorney-in-fact only if written evidence of authority in form and substance satisfactory to Escrow Agent is furnished to Escrow Agent and agreed to by Escrow Agent.

2.24 The death, disability, bankruptcy, insolvency, dissolution or reorganization of any of the undersigned shall not affect or prevent performance by Escrow Agent of its obligations or its right to rely upon instructions received hereunder.

2.25 Escrow Agent shall have no discretionary powers, including no power to choose proper investments. Escrow Agent shall never be required to post a bond in connection with the providing of its services hereunder.

2.26 Escrow Agent may consult with and rely on the advice of legal counsel satisfactory to it at any time in respect to any question relating to its duties or responsibilities hereunder or otherwise in connection herewith, and shall not be liable for any action taken, suffered, or omitted by Escrow Agent in good faith upon the advice of such counsel, and shall be fully protected in doing so, and shall be fully compensated for all costs and expenses in doing so.

2.27 All parties acknowledge and agree that Escrow Agent is acting solely and exclusively as a depository hereunder. Escrow Agent is not a party to, and is not bound by or charged with notice or knowledge of, any agreement out of which this escrow may arise, or any agreement or undertaking which may be evidenced by or disclosed by the Escrow Fund, other than this Escrow Agreement, it being the intention of the parties hereto that Escrow Agent assent to and be obligated to give consideration only to the terms and provisions hereof.

2.28 Escrow Agent may enter into business dealings with any party to this Escrow Agreement, and such business dealings shall not constitute a conflict of interest with the responsibilities of Escrow Agent hereunder.

2.29 Escrow Agent shall have no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of any of the undersigned with respect to arrangements to contracts with each other or with others. Escrow Agent's sole duty hereunder being to hold the Escrow Fund and to dispose of and deliver the same in accordance with instructions given to it as provided in this Escrow Agreement. Escrow Agent shall be obligated to perform only such duties as are expressly set forth herein, and no implied covenants or obligations shall be inferred from this Agreement.

2.30 All interest or other income earned on funds in the Account, less applicable taxes, shall automatically be reinvested in the Escrow Fund.

2.31 The Escrow Fund is owned by Garvey, and this Escrow Agreement does not transfer ownership of said funds to the EPA, or to any other person or entity. Nevertheless, Garvey acknowledges and agrees that this Escrow Fund is subject to the security interest of EPA substantially in the form set forth in the attached security agreement which is Exhibit B ("EPA Security Agreement").

2.32 If any bankruptcy proceeding is filed with respect to Garvey during the term of this Escrow Agreement, whether voluntary or involuntary, this Escrow Agreement shall remain in effect according to the terms hereof and the Security Agreement attached as Exhibit B.

2.33 Garvey represents and warrants that, as of the date of this Escrow Agreement, it has a good and valid ownership interest in the Escrow Fund, and that the Escrow Fund is not subject to any lien, pledge, charge, or security interest other than the security interest of EPA in the Escrow Fund, as set forth in the EPA Security Agreement attached as Exhibit B. For so long as this Escrow Agreement remains in effect, Garvey covenants and agrees that it shall not create or incur, or permit to be created or incurred, any lien, pledge, encumbrance, charge, or security interest upon the Escrow Fund other than the security interest of EPA in the Escrow Fund, as set forth in the EPA Security Agreement attached as Exhibit B.

2.34 Escrow Agent as Depository: Escrow Agent is not a party to and is not bound by or charged with notice of any agreement out of which this escrow may arise. Escrow Agent acts hereunder solely as a depository and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, authenticity or validity of the subject matter of the Escrow, the form of execution thereof or for the identity or authority of any person executing this Escrow Agreement or depositing the subject matter of the Escrow. The responsibility of the Escrow Agent extends only to the duties affirmatively stated in this Escrow Agreement and to the exercise of ordinary diligence. Escrow Agent shall not be responsible for any act or omission except for actual fraud, dishonesty, negligence, or bad faith. No implied duties or obligations of Escrow Agent shall be read into this Escrow Agreement, and Escrow Agent shall not in any event be required to construe or determine the rights of any party under this Escrow Agreement.

2.35 Entitlement to Rely: Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt authorization, power of attorney or other paper or document that Escrow Agent reasonably and in good faith believes to be genuine and what it purports to be, including but not limited to items directing investment or non-investment of funds, items requesting or authorizing release, disbursement or retention of the subject matter of the Escrow and items amending the terms of this Escrow Agreement. Escrow Agent may rely upon any such instructions and deliver the subject matter of the Escrow as directed without further investigation.

2.36 If any party to this Escrow Agreement is a legal entity other than a natural person, Escrow Agent may conclusively presume that the representative of such party has full power and authority to instruct Escrow Agent on behalf of such party unless written notice to the contrary is delivered to Escrow Agent.

2.37 Garvey represents that its correct Taxpayer Identification Number assigned by the Internal Revenue Service ("IRS") or any other taxing authority is set forth on the signature page hereof. In addition, all interest or other income earned under the Escrow Agreement shall be reported to the IRS or any other taxing authority. Escrow Agent shall withhold any taxes it deems appropriate and shall remit such taxes to the appropriate authorities. Any tax returns or reports required to be prepared and filed on behalf of or by the Escrow Fund will be prepared and filed by Garvey, and the Escrow Agent shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned by the Escrow Fund. In addition, any

tax or other payments required to be made pursuant to such tax return or filing that has not already been remitted by Escrow Agent will be paid by Garvey and will be reimbursed from the Escrow Fund as provided in Paragraph 2.3. Escrow Agent shall have no responsibility for such payment unless directed to do so by the appropriate authorized party.

2.38 In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Escrow Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered and issued, which it is advised by legal counsel of its own choosing is binding upon it, and in the event that the Escrow Agent obeys or complies with any such order, writ, order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance with notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

2.39 Garvey shall indemnify, defend and save harmless the Escrow Agent and its directors, officers, agents and employees (the "indemnitees") from and against any and all loss, liability or expense (including the fees and expenses of in house or outside counsel and experts and their staffs and all expense of document location, duplication and shipment) arising out of or in connection with (i) the Escrow Agent's execution and performance of this Escrow Agreement, except in the case of any indemnitee to the extent that such loss, liability or expense is finally adjudicated to have been primarily caused by the negligence or willful misconduct of such indemnitee, or (ii) its following any instructions or other directions from Garvey or EPA, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. Garvey acknowledges that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Escrow Agreement.

2.40 Account Opening Information/TINs

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

For accounts opened in the US: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened, the Escrow Agent will ask for information that will allow us to identify relevant parties. For non-US accounts: To help in the fight against the funding of terrorism and money laundering activities we are required along with financial institutions to obtain, verify and record information that identifies each person who opens an account. When you open an account, the Escrow Agent will ask for information that will allow us to identify you.

2.41 In the event funds transfer instructions are given, whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated in this Section, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent.

For Garvey Elevators: Richard Garvey (817) 335-5881
 Reece Pettigrew (817) 335-5881

For EPA: Brian Zurbuchen (913) 551-7101
 Alyse Stoy (913) 551-7826

For NDEQ: Mike Felix (402) 471-2938
 Annette Kovar (402) 471-3194

GARVEY ELEVATORS, INC.

Tax Certification: Taxpayer ID # 75-1221334

Under the penalties of perjury, the undersigned certifies that:

- the entity is organized under the laws of the United States
- the number shown above is its correct Taxpayer Identification Number, and
- it is not subject to backup withholding because: (a) it is exempt from backup withholding or (b) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding.

Investors who do not supply a tax identification number will be subject to backup withholding in accordance with IRS regulations.

By: Richard F. Garvey
Name: RICHARD F. GARVEY
Title: PRESIDENT

AGP GRAIN MARKETING, LLC

Tax Certification: Taxpayer ID # 71-0970028

Under the penalties of perjury, the undersigned certifies that:

- the entity is organized under the laws of the United States
- the number shown above is its correct Taxpayer Identification Number; and
- it is not subject to backup withholding because: (a) it is exempt from backup withholding or (b) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding.

Investors who do not supply a tax identification number will be subject to backup withholding in accordance with IRS regulations.

By: J. Keith Spackler

Name: J. KEITH SPACKLER

Title: MANAGER, SECRETARY & TREASURER

JPMorgan Chase Bank, N.A.

By: 

Name: _____

Title: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

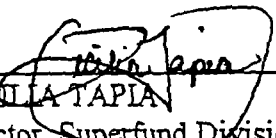
 7/11/2005
CECILIA TAPIA
Director, Superfund Division
U.S. Environmental Protection
Agency, Region VII
901 North 5th Street
Kansas City, Kansas 66101

Exhibit "A"
Garvey Elevator

A tract of land comprising a part of the Northwest Quarter (NW1/4) of Section 23, Township 7 North, Range 10 West of the 6th P.M. said tract being more particularly described as follows:

With reference to the Northeast corner of said NW 1/4; thence running S 89°49'03" W on the North line of said NW 1/4 for a distance of 436.32 feet; thence S 00°10'08" E for 60.00 feet to a point on the Southerly right-of-way line of U.S. Highway #6, said point also being the actual POINT OF BEGINNING; thence continuing S 00°10'08" E for 272.97 feet; thence N 89°49'17" E for 194.51 feet to a point on the Westerly right-of-way line of the Burlington Northern and Santa Fe Railway; thence S 21°11'46" W on said right-of-way for 2485.27 feet to a point on the South line of said NW 1/4; thence S 89°44'25" W on the South line of said NW 1/4 for a distance of 1462.52 feet to a point on the Easterly right-of-way line of Marion Avenue, said right-of-way line being 33.00 feet Easterly from the West line of said NW 1/4; thence on an assumed bearing of N 00°00'00" E on said right-of-way line, parallel with and 33.00 feet Easterly from the West line of said NW 1/4 for 2316.23 feet; thence N 89°49'15" E for 145.08 feet; thence N 00°01'46" E for 273.01 feet to a point on the Southerly right-of-way line of said Highway #6; thence N 89°49'03" E on said right-of-way line for 1185.61 feet; thence S 11°57'18" W for 297.73 feet; thence N 89°48'44" E for 598.68 feet; thence N 11°57'39" E for 297.68 feet to a point on the Southerly right-of-way line of said Highway #6; thence N 89°49'03" E on said right-of-way line for 236.25 feet to the POINT OF BEGINNING, said tract containing 110.269 acres more or less.

Exhibit "B"

EPA SECURITY AGREEMENT

SECURITY AGREEMENT

This SECURITY AGREEMENT (this "Security Agreement"), dated as of September 28, 2005, is made by Garvey Elevator, Inc., a Kansas corporation (the "Grantor"), in favor of the United States Environmental Protection Agency, an agency of the federal government of the United States of America ("EPA").

RECITALS

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. ("CERCLA"), Grantor has entered into an Agreement with EPA and AGP Grain Marketing, LLC ("AGP") (Docket No. CERCLA-07-2005-0268) (the "Agreement"), and an Administrative Order on Consent ("AOC") for Removal Action and Remedial Investigation/Feasibility Study (Docket No. CERCLA-07-2005-0215) to, among other things, provide for Grantor's performance of removal actions and a remedial investigation/feasibility study at the Garvey Elevator Site ("Site") and provide for funds paid by AGP pursuant to the Agreement to be deposited into an Escrow Fund to be held by the Escrow Agent and will be used by Grantor for response actions related to the Site; and

WHEREAS, in order to implement the Agreement and AOC (i) an Escrow Fund has been established with JPMorgan Chase Bank, N.A. ("Bank"), Account No. 16221678.1 (the "Escrow Fund"); (ii) Grantor has agreed that the Escrow Fund shall be disbursed pursuant to the terms of the Escrow Agreement pertaining to the Escrow Fund dated as of September 28 2005, between the Grantor, EPA, AGP and the Escrow Agent (the "Escrow Agreement"); and (iii) Grantor has agreed to grant EPA a security interest in the Escrow Fund in order to secure the Grantor's obligation required under the Agreement and AOC.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein that are defined in the AOC, the Agreement or the Escrow Agreement shall have their respective meanings as therein defined. For purposes of this Security Agreement, all other undefined terms used herein, whether capitalized or not, but that are defined in Article 8 or Article 9 of the Uniform Commercial Code (as the same may be in effect from time to time in the State of Kansas or any other applicable jurisdiction, the "UCC"), shall have their respective meanings as therein defined, except for the capitalized term "Escrow Fund," which shall have the meaning set forth for such term in the above Recitals.

2. Grant of Security Interest.

(a) Collateral. As security for the prompt and complete performance when due of any and all of the Obligations (as defined below), the Grantor hereby collaterally assigns, conveys, pledges, hypothecates, and transfers to the EPA, and grants and creates a lien on and first priority security interest (the "Security Interest") in favor of the EPA in, all right, title, and interest of the Grantor in, to, and under the following, whether now existing or hereafter arising or acquired (the "Collateral"): the Escrow Fund, together with all funds, cash, monies, financial assets, investments, instruments, certificates of deposit, promissory notes, and any other property at any time on deposit therein or credited thereto, all rights to payment or withdrawal therefrom, and all income, profits, gains, and interest thereon; and all proceeds, products, substitutions, replacements, and accessions of and to the foregoing Collateral, or any rights arising out of the Collateral, and any and all other amounts paid or payable in connection with any of the Collateral;

provided, however, that any distributions, payments, or releases of Collateral (whether in the form of cash, instruments, or otherwise) properly made pursuant to the Escrow Agreement, Agreement, or AOC shall be released from the Security Interest granted hereunder and shall no longer be part of the Collateral upon the making of such distribution.

(b) Sufficiency of Collateral Description. It is the intention of the parties hereto that the description of the Collateral set forth in Section 2(a) be sufficient to enable the EPA, upon exercise of its remedies set forth in this Security Agreement, to take possession of, and foreclose upon, all of the right, title, and interest of the Grantor in and to the Collateral upon the occurrence and during the continuance of an Event of Default (as defined below) and subject to the limitations set forth in this Security Agreement; provided, however, that the Collateral is hereby assigned to the EPA solely as security, and the EPA shall have no duty, liability, or obligation whatsoever with respect to the Collateral, unless the EPA so elects in a writing delivered to the Grantor.

(c) Obligations. This Security Agreement secures, in accordance with the provisions hereof, the following obligations now existing or hereafter arising (collectively, the "Obligations"):

(i) payment and performance of each and every obligation, covenant, and agreement of the Grantor set forth in the Agreement;

(ii) payment and performance of each and every obligation, covenant, and agreement of the Grantor set forth in the AOC;

(iii) payment and performance of each and every obligation, covenant, and agreement of the Grantor as required by EPA and set forth in any future Record of Decision, Action Memorandum, Consent Decree, Administrative Order on

Consent, Unilateral Administrative Order, and/or any other directive to be issued by EPA for the Site;

(iv) payment of all sums advanced in accordance herewith by or on behalf of EPA to protect, retake, or hold, or realize upon, the Collateral.

(d) Event of Default. EPA shall have the right, but not the obligation, to exercise any or all of its rights and remedies against the Collateral as set forth in this Security Agreement upon the occurrence and during the continuance of any of the following (each, an "Event of Default"):

- (i) the filing by the Grantor of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts;
- (ii) Grantor's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws;
- (iii) Grantor's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets;
- Grantor's making a general assignment for the benefit of creditors; or
- (iv) Grantor's taking any corporate action for the purpose of effecting any of the foregoing.

3. Perfection of Collateral.

(a) Financing Statement(s). The Grantor agrees to do such acts and things, including but not limited to, authorizing the filing of financing and continuation statements, as the EPA may from time to time reasonably request as are necessary or required by applicable law to enable EPA to create, preserve, perfect, or validate the Security Interest in the Collateral in favor of the EPA. Grantor agrees to pay all costs and fees connected with the filing of all financing, continuation, termination or similar statements reasonably filed by the EPA in connection with this Security Agreement. The EPA is hereby appointed as the Grantor's attorney-in-fact to file all financing or continuation statements and to do such other acts as the EPA may reasonably deem appropriate to perfect and continue perfected the Security Interest created by this Security Agreement or to protect the Collateral.

(b) Escrow Fund. The Grantor agrees to duly execute and deliver the Escrow Agreement to the EPA and cooperate with the EPA and the Bank in the establishment and maintenance of the Escrow Fund until the termination of the Escrow Agreement and the final disposition of the Escrow Fund in accordance with the terms of the Escrow Agreement. Funds deposited in the Escrow Fund shall be managed, administered and withdrawn from the Escrow Fund in accordance with the terms and provisions of the Escrow Agreement.

(c) Further Assurances. To the extent not included in the foregoing, the Grantor shall, from time to time at the Grantor's expense, promptly execute and deliver all further agreements, instruments, and documents, and take all further action, that may be necessary in order to create, perfect, or protect the Security Interest granted or purported to be granted hereby or to enable the EPA to exercise and enforce its rights and remedies hereunder with respect to the Collateral.

4. Representations and Warranties. The Grantor hereby represents and warrants as of the date hereof as follows:

(a) Title; No Other Liens. The Grantor has full power and authority to grant the Security Interest in and to the Collateral hereunder. The Grantor is the legal and beneficial owner of the Collateral in existence on the date hereof free and clear of any and all liens, pledges, encumbrances, charges, or security interests other than a "Permitted Encumbrance." "Permitted Encumbrance" shall mean the Security Interest created by this Security Agreement. Except with respect to the Permitted Encumbrance, no security agreement, financing statement, or other public notice with respect to all or any part of the Collateral is on file or of record in any public office.

(b) Perfection Representations. The exact legal name of the Grantor is Garvey Elevator, Inc., the Grantor is a duly formed and validly existing corporation organized under the laws of the State of Kansas, and its certificate of incorporation is duly filed with the Secretary of State of the State of Kansas. The Grantor's chief executive office is located at 2918 Wingate Street, P.O. Box 9600, Fort Worth, Texas 76147. The Escrow Account is held, maintained, and administered by the Escrow Agent

(c) Other Perfection Matters. Subject to compliance with the perfection, other requirements of the UCC, and to the effects of bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights and remedies of creditors generally, this Security Agreement creates a valid, continuing, and perfected first-priority security interest in the Collateral in favor of the EPA, subject to no liens or security interests other than the Permitted Encumbrance, and is enforceable as against creditors of the Grantor.

5. Covenants and Agreements. The Grantor hereby covenants and agrees that the Grantor shall observe and fulfill, and shall cause to be observed and fulfilled, each and all of the following covenants until all Obligations have been indefeasibly paid and performed in full or this Security Agreement has terminated in accordance with its terms:

(a) Legal Status. The Grantor shall not change its name, place of business, chief executive office, or its mailing address, or change its type of organization or jurisdiction of organization, without notifying EPA in writing at least 60 days in advance of any such change.

(b) Prohibition Against Transfer of Collateral. The Grantor shall not dispose of any part of the Collateral, whether in one or a series of transactions, or otherwise undertake disposal of any of the Collateral, except as permitted pursuant to this Security Agreement and the Escrow Agreement.

(c) Filing Fees, Taxes, Etc. The Grantor shall pay all filing, registration, and recording fees or re-filing, re-registration, and re-recording fees, and all federal, state, county, and

municipal stamp taxes and other similar taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of this Security Agreement.

(d) Maintenance of Collateral Records. The Grantor shall keep and maintain at all times and at its own cost and expense complete records of the Collateral. The Grantor shall furnish to the EPA such other information regarding the Collateral as the EPA may reasonably request, all in reasonable detail.

(e) Limitation on Liens on the Collateral. The Grantor shall not create, assume, incur, suffer to exist, or permit to be created, assumed, incurred, or suffered to exist, shall defend the Collateral against, and shall take such other action as is necessary to remove, any lien, pledge, charge, security interest, encumbrance, or claim on or to the Collateral, other than the Permitted Encumbrance, and shall defend the right, title, and interest of the EPA in and to any of the Collateral against the claims and demands of all persons whomsoever other than with respect to the Permitted Encumbrance.

(f) Location of Collateral. The Collateral, to the extent not delivered to the EPA in accordance with the terms of this Security Agreement or disposed of in accordance with the terms of the Escrow Agreement, will be kept at the Bank.

6. Remedies: Rights upon Event of Default. Upon the occurrence and during the continuance of an Event of Default, the EPA may do the following:

(a) Provide written notice to the Escrow Agent directing the Escrow Agent to deliver all or any part of the Collateral to the EPA at any place or places designated by the EPA, it being understood that such obligations are of the essence under this Security Agreement;

(b) Make such payments and do such acts as the EPA may deem necessary to protect, perfect, or continue the perfection of the Security Interest in the Collateral, including, without limitation, commencing, appearing, or otherwise participating in or controlling any action or proceeding purporting to affect the Security Interest in or ownership of the Collateral;

(c) In accordance with applicable laws, accept the Collateral in full or partial satisfaction of the Obligations; and

(d) Exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party after default under the UCC and any relevant laws in any jurisdiction.

7. EPA Appointed Attorney-in-Fact. Upon the occurrence and during the continuance of an Event of Default and in the EPA's discretion, the Grantor hereby irrevocably constitutes and appoints the EPA and any agent thereof, with full power of substitution, as its true and lawful attorney-in-fact (which appointment as attorney-in-fact shall be coupled with an interest), with full

authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time, to take any action and to execute any and all documents and instruments that the EPA may deem necessary or advisable to accomplish the purposes of this Security Agreement in a commercially reasonable manner to the extent required by the UCC.

8. No Duty on the EPA's Part; Limitation on the EPA's Obligations. The powers conferred on the EPA hereunder are solely to protect the interest in the Collateral and shall not impose any duty upon the EPA to exercise any such powers, including, without limitation, any calls, conversions, maturities, tenders, or other matters relating to the Collateral. The EPA shall be accountable only for amounts that it receives as a result of the exercise of such powers. Except as provided in the next sentence, anything herein to the contrary notwithstanding, the Grantor shall remain liable under the Escrow Agreement to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed. The exercise by the EPA of any of the rights or remedies hereunder shall not release the Grantor from any of its duties or obligations under the Escrow Agreement unless expressly assumed by the EPA in writing. The Collateral is hereby assigned to the EPA solely as security, and the EPA shall have no duty, liability, or obligation whatsoever with respect to the Collateral, including, without limitation, the filing of any continuation statements, unless the EPA so elects in writing consistent with its rights under this Security Agreement.

9. Absence of Fiduciary Relation. The EPA in its capacity as beneficiary of the Security Interest is not a fiduciary of, or shall owe or be deemed to owe any fiduciary duty to, the Grantor or any other party.

10. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be given in accordance with the Escrow Agreement.

11. No Waiver; Cumulative Remedies. By exercising or failing to exercise any of its rights, options, or elections hereunder (without also expressly waiving the same in writing), the EPA shall not be deemed to have waived any breach or default on the part of the Grantor or to have released the Grantor from any of its obligations secured hereby. No failure on the part of the EPA to exercise, and no delay in exercising (without also expressly waiving the same in writing) any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. The EPA shall have all of the rights and remedies granted under the Escrow Agreement and available at law or in equity and these same rights and remedies may be pursued separately, successively, or concurrently against the Grantor or the Collateral, at the discretion of the EPA. The application of the Collateral to satisfy the Obligations pursuant to the terms hereof shall not operate to release the Grantor from its Obligations until payment or performance in full of any deficiency has been made.

12. Exculpatory Provisions. The EPA shall not be liable or responsible in any manner to any person for any recitals, statements, representations, or warranties made by the Grantor or any officer thereof contained in this Security Agreement or in any certificate, report, statement, or other document referred to or provided for in, or received by the EPA under or in connection with, this Security Agreement.

13. Severability. In the event any one or more of the provisions contained in this Security Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

14. Amendment. This Security Agreement may not be modified, amended or otherwise changed in any manner, except by written amendment executed by the Grantor, subject to prior written approval of the EPA of any such modification, amendment, or change.

15. Successors and Assigns. This Security Agreement shall be binding upon and inure to the benefit of the Grantor and its successors and assigns, as well as the EPA and any successor agency thereto.

16. Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Security Agreement, and are not to affect the construction of, or to be taken into consideration in interpreting, this Security Agreement.

17. Governing Law. This Security Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

18. Entire Agreement. The terms of this Security Agreement, the Agreement, the AOC and the Escrow Agreement are intended by the parties hereto as a final expression of their agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Security Agreement constitutes the complete and exclusive statement of all related terms, and that no extrinsic evidence whatsoever may be introduced in any proceedings (whether judicial or otherwise) involving this Security Agreement, except for any future Record of Decision, Action Memorandum, Consent Decree, Administrative Order on Consent, Unilateral Administrative Order, and/or any other directive to be issued by EPA for the Site or any evidence of a subsequent written amendment to this Security Agreement.

19. Continuing Security Interest; Termination. This Security Agreement shall create a continuing Security Interest in the Collateral and shall remain in full force and effect for the benefit of the EPA until the date that the Escrow Agreement terminates in accordance with its terms. Upon the happening of such event, the Security Interest granted hereby shall terminate.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed as of the day and year first above written.

GARVEY ELEVATORS, INC., as Grantor

By: Richard F. Garvey

Name: RICHARD F. GARVEY

Title: PRESIDENT

STATE OF TEXAS,

COUNTY OF TARRANT.

BE IT REMEMBERED, that on this 5th day of July, 2005, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came Richard F. Garvey, President of Garvey Elevators, Inc., who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

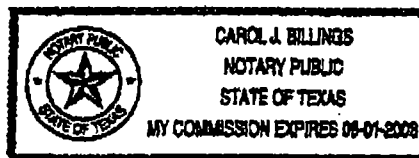
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

(Seal)

Notary Public

My Appointment Expires: 8-1-08

Carol J. Billings



U.S. ENVIRONMENTAL PROTECTION AGENCY



CECILIA TAPIA

Director, Superfund Division

U.S. Environmental Protection

Agency, Region VII

901 North 5th Street

Kansas City, Kansas 66101

FINANCING STATEMENT FILINGS

Debtor: Garvey Elevator, Inc.

Secured Party: United States Environmental Protection Agency, an agency of the federal government of the United States of America

Jurisdiction(s): Secretary of State of the State of Kansas

Exhibit "C"

Fee Schedule



Schedule of Fees for Escrow Agent Services

New Account Acceptance Fee \$ 750 Waived
Payable upon Account Opening

Minimum Administrative Fee \$2,000
Payable Upon Account Opening and in Advance
each year in which we act as Escrow Agent

ACTIVITY FEES:

Activity fees will not be assessed for any month in which fewer than 10 transactions occur.

Disbursements

Per Check	\$	35
Per Wire U.S.	\$	35
International	\$	100

Receipts

Per Deposit	\$	10
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Investments

Per directed buy/sell	\$	75
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The Investments fee will be waived if JPMorgan's Money Market Account sweep product offered by JPMorgan's Escrow Group is the selected investment.

A one (1) year Minimum Administrative Fee will be assessed for any account that is funded. The account will be invoiced in the month in which the account is opened and annually thereafter. Payment of the invoice is due 30 days following receipt.

Modification of Fees:

Circumstances may arise necessitating a change in the foregoing fee schedule. The Bank will attempt at all times, however, to maintain the fees at a level that is fair and reasonable in relation to the responsibilities assumed and the duties performed.

Additional Disclosures:

- The escrow deposit shall be continuously invested in a JPMorgan Money Market Account. The Minimum Administrative Fee would include a supplemental charge up to

25 basis points on the escrow deposit amount if another investment option were chosen.

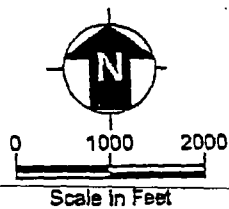
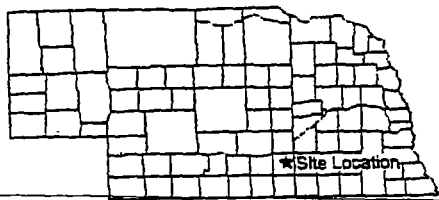
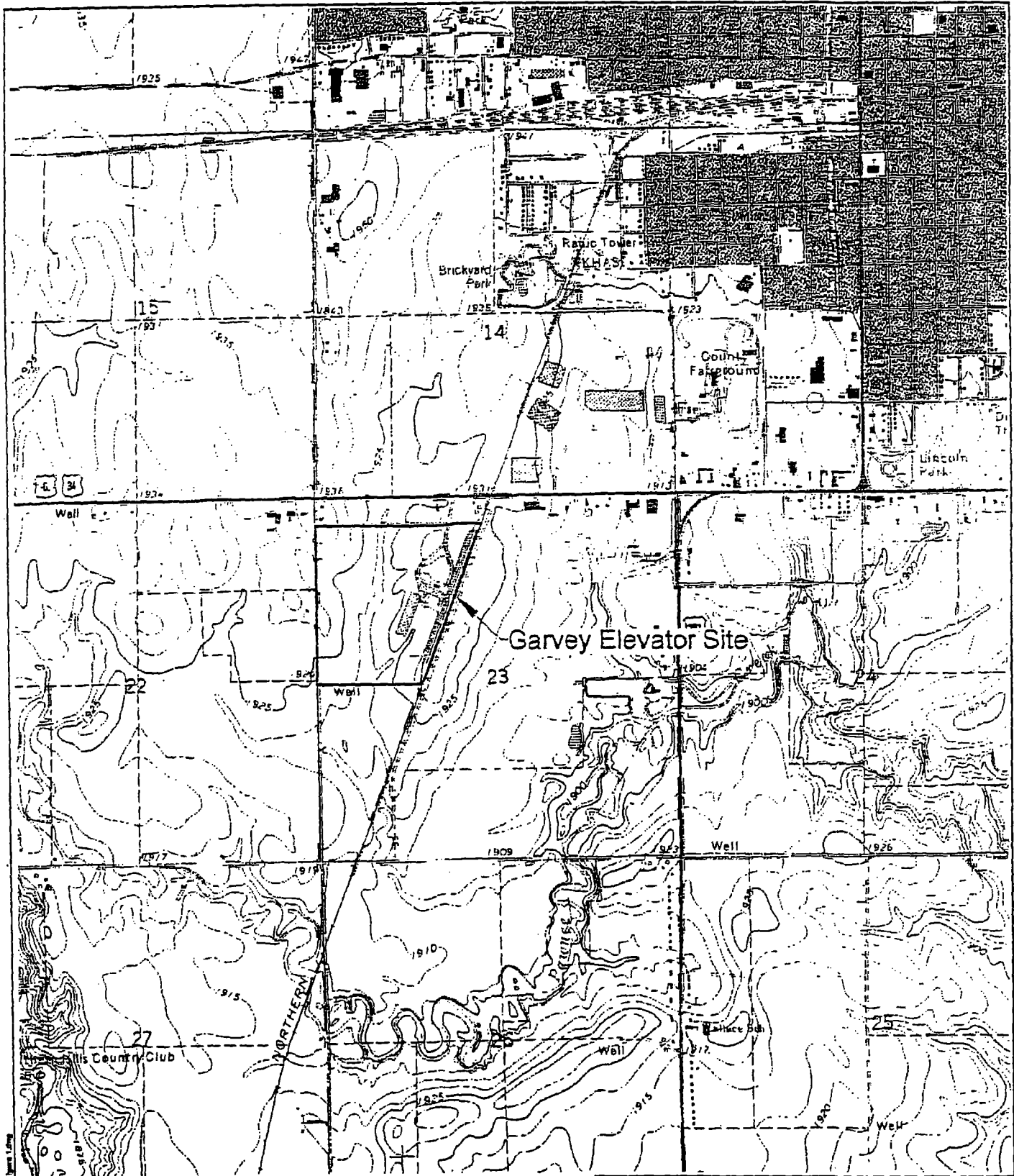
- This proposal is subject to our review and acceptance of the documentation governing the transaction, transaction structure, final determination of our duties and responsibilities and satisfactory due diligence review of the parties to the agreement.

Compliance:

- To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. When an account is opened, we will ask for information that will allow us to identify relevant parties.
-

Appendix B

Site Map



Garvey Elevator
Hastings, Nebraska

Figure 1
Site Location Map

Appendix C

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 2005, by and between AGP Grain Marketing, LLC. ("Grantor"), having an address of _____; and _____ ("Grantee"), having an address of _____.

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the county of Adams, State of Nebraska, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the Garvey Elevator Superfund Site ("Site"), with respect to which the U.S. Environmental Protection Agency ("EPA"), pursuant to 40 C.F.R. § 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), has initiated response actions; and

4. WHEREAS, in an Agreement between Grantor and the United States, Docket No. CERCLA-07-2005-0268 ("Agreement"), Grantor agreed to conduct certain actions that are generally described as follows:

Pay \$2,050,000.00 into an Escrow Fund to be used for investigation and cleanup actions at the Site, and implement institutional controls to prevent exposure to contaminated soil and groundwater; and

5. WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the response actions to be performed at the Site; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

6. WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

7. Grant: Grantor, on behalf of itself and its successors and assigns, in consideration of the

terms of the Order, hereby covenants and declares that the Property shall be subject to the restrictions on use set forth below, and do give, grant and convey to the Grantee, and its assigns, with general warranties of title, subject to easements, reservations, restrictions of record, liens or encumbrances that are approved by EPA, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

8. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the cleanup of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

9. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor. Unless otherwise approved in writing by EPA, Grantor shall not:

a) Utilize the ground water underlying the Property for human use or consumption;

b) Cause or allow a disturbance of the subsurface of the Site; and

c) Use the Property for residential purposes.

10. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantee. If requested by the Grantor, such writing will be executed by the Grantee in recordable form.

11. Environmental Protection Easement: Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property for the purposes of:

a) Implementing any response actions at and near the Site;

b) Verifying any data or information submitted to EPA;

c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of water and specifically, without limitation, obtaining split or duplicate samples;

12. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

13. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access

or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

14. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

15. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 200__, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 200__, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE UNITED STATES OF AMERICA.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

16. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

17.- Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

18. Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the removal action, to the public or to the environment protected by this instrument.

19. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

20. Covenants: Grantor hereby covenants to and with the United States and its assigns, that the Grantor is lawfully seized in fee simple of the Property, subject to easements, restrictions and reservations of record, liens or encumbrances that are approved by EPA, that the Grantor has good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Exhibit B attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

21. Notices: Any notice, demand, request, consent, approval, or communication that any party desires or is required to give shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

Grantor:
AGP Grain Marketing, LLC
Attn: Legal Department
12700 West Dodge Road
Omaha, Nebraska 68154

Grantee: _____
Address _____

22. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the laws of the state of Nebraska.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA, 42 U.S.C. § 9601 et seq. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in

place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

g) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and its assigns forever.

By: _____

This declaration is accepted this ____ day of _____, 200__.

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

LIST OF PERMITTED TITLE ENCUMBRANCES